

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 440/2018

1. Dy. Conservator Of Forests, Social Forestry East, Mini Secretariat, Jaipur.
2. Regional Forest Officer, Social Forestry, Range Chomu District Jaipur.

-----Petitioners

Versus

Shri Babulal Meena S/o Shri Manaram, Through Shri Kan Singh Rathore, 585, Devi Nagar, Behind Shyam Nagar Post Office, New Sanganer Road, Sodala, Jaipur.

-----Respondent

For Petitioner(s)	: Mr.Rahul Lodha, Addl.GC.
For Respondent(s)	: Mr.Hanumant Singh Rathore for Mr.Kan Singh Rathore

JUSTICE ANOOP KUMAR DHAND

Order

18/03/2025

1. By way of filing the instant writ petition, a challenge has been made to the impugned award dated 13.02.2017 passed by the Labour Court No.2, Jaipur in LCR No.591/1998 wherein the statement of claim filed by the respondent-workman (hereinafter referred to as "the workman") has been allowed and his termination order dated 07.08.1989 has been quashed and set-aside and the petitioner has been directed to reinstate him back in service.
2. Learned counsel for the petitioner submits that the workman was appointed as Cattle Guard by the petitioner-department in the month of November, 1985 and his services were terminated on 07.08.1989 and a disputed was raised by the workman after a

considerable delay in the year 1996. Counsel submits that the workman has failed to establish on the record that he worked with the petitioner continuously for a period of more than 240 days in the preceding years, but overlooking this material aspect of the matter, the impugned award has been passed with the direction to the petitioner to reinstate him back in service. Counsel submits that reinstatement is not a rule of thumb in each and every matter. Counsel submits that looking to the length of service of the workman, i.e., three years and ten months, the Labour Court could have awarded certain amount of compensation in lieu of his reinstatement, hence, under these circumstances, interference of his Court is warranted.

3. *Per contra*, learned counsel for the respondent-workman opposes the arguments and submits that without following the mandate contained under Section 25-F of the Industrial Disputes Act, 1947 (for short, "the Act of 1947"), the services of the workman was terminated and this fact has been appreciated by the Labour Court while passing the impugned award and the Labour Court has rightly issued a direction to the petitioner to reinstate the workman in service, hence, under these circumstances, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that the respondent-workman was appointed as Cattle Guard by the petitioner in the month of November, 1985 and he continued to work on the said post till 07.08.1989. The services of the workman were terminated without issuing any notice and without making any payment of

compensation and the aforesaid action of the petitioner was in violation of the provisions contained under Section 25-F of the Act of 1947. This fact was well-appreciated by the Labour Court while recording a finding of fact that the workman has worked with the petitioner for more than 240 days in a calendar year, accordingly, the impugned termination order of the workman has been passed.

6. Now, the question which remains for consideration of this Court is whether looking to the length of service of the workman and looking to his age, the order of his reinstatement should have been passed or he could have been granted an adequate amount of compensation in lieu of his reinstatement.

7. As per the recent trend of judgments of Hon'ble Apex Court as well this Court, it has been held in number of cases that even if the termination is found to be illegal, the reinstatement is not a rule of thumb. It has been held that lump-sum amount of compensation can be paid to the workman in lieu of reinstatement.

8. In the case of **Bharat Sanchar Nigam Ltd. Vs. Man Singh** reported in **(2012) 1 SCC 558**, the Hon'ble Apex Court held that when the termination is set aside because of violation of the provisions of 25F of the I.D Act, it is not necessary that the relief of reinstatement be given as a matter of right.

9. In **Incharge Officer and Ors. Vs. Shankar Shetty** reported in **(2010) 9 SCC 126**, it was inter alia held that in those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

10. In **BSNL vs. Bhurumal** reported in **(2014) 7 SCC 177**, taking the trend further, the Supreme Court inter alia held as under in para 33 and 34:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in

the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”

11. The Division Bench of this Court in the case of **Deputy Conservator of Forests vs. Sharfuddin** passed in **D.B. Special Appeal Writ No.700/2018** decided on 20.08.2019 has held para Nos.3 and 4 as under:

“3.We have heard Counsel for the parties. It is contended by the State that the approach of the Courts these days has been to not direct reinstatement but instead grant lump sum compensation; the decision in The Director, Tiger Project, Sariska, District Alwar Vs. Data Ram & Ors.- D.B. Special Appeal Writ No.406/2018 and connected cases on 31.07.2018 has been cited. It is contended that in that judgment Court had directed that broadly if someone had worked for a year, the compensation payable would be `1,00,000/-; in the case of two years, it ought to have been `2,00,000/- and in the case of three years and above, it ought to be `3,00,000/-. Counsel for the respondent argued that the labour Court itself has denied back wages. In these circumstances, the denial of reinstatement would be unfair.

4. Having considered the overall circumstances and the given facts of this case which clearly shows that the workman was in service for one year, in the opinion of this Court, the ends of justice would be served if lump sum compensation to the tune of `2,50,000/- (approximately equivalent to two years back wages) based on minimum wages is given. This amount shall be paid to the respondent within eight weeks from today.”

12. Considering the dicta of judgments as passed by the Hon’ble Apex Court in the above referred cases, in the considered opinion

of this Court, the Labour could have passed an order granting adequate amount of compensation to the workman instead of passing the order of his reinstatement.

13. Looking to the length of service of the workman rendered in the Office of the petitioner with effect from November, 1985 till 07.08.1989, i.e., more than three years and ten months, the workman is entitled to get a lump sum amount of compensation of Rs.3,00,000/- (Rs.three lakhs only) to the workman, in lieu of his reinstatement in service.

14. Accordingly, the petition stands partly allowed and the award of the Labour Court dated 13.02.2017 stands modified with the direction to the petitioner to pay compensation amount of Rs.3,00,000/- (Rs.three lakhs only) to the workman within a period of three months from the date of receipt of certified copy of this order.

15. It is made clear that in case, the petitioner fails to comply with the aforesaid order passed by this Court within the above stipulated time i.e. three months, then the respondent-workman would be entitled to get interest @ 6% per annum from the date of passing of the award till the date of its actual payment.

16. Stay application and all pending application(s), if any, also stand(s) disposed of.

(ANOOP KUMAR DHAND),J